

CRS Report for Congress

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Iraq: Elections, Government, and Constitution

Kenneth Katzman
Specialist in Middle Eastern Affairs
Foreign Affairs, Defense, and Trade Division

Summary

Despite continued high levels of insurgent violence, elections for a transitional National Assembly were held on January 30, 2005, a government was formed, and a permanent constitution has been drafted and will be put to a national referendum on October 15. The draft constitution has attracted significant Sunni Arab opposition, but a last minute amendment might alter Sunni perceptions and voting patterns. (See CRS RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*.)

Shortly after Operation Iraqi Freedom (OIF) deposed Saddam Hussein's regime in April 2003, the Bush Administration linked the end of U.S. military occupation to the completion of a new constitution and the holding of national elections, tasks expected to take two years. Prominent Iraqis persuaded the Administration to accelerate the process, and sovereignty was given to an appointed government on June 28, 2004, with a government and a permanent constitution to be voted on thereafter, as stipulated in a Transitional Administrative Law (TAL), signed on March 8, 2004, as follows:¹

- The elections held on January 30, 2005 (within the prescribed time frame) were for a 275-seat National Assembly; a provincial assembly in each of Iraq's 18 provinces (41 seats each; 51 for Baghdad); and a Kurdistan regional assembly (111 seats). Results are in **Table 1**, below. The Assembly chose a transitional executive consisting of a "presidency council" (a president and two deputies), a prime minister with executive power, and a cabinet. Ministers are not required to be in the Assembly.
- The National Assembly was assigned to draft a constitution by August 15, 2005, to be put to a national vote by October 15, 2005. Two-thirds of the voters in any three Iraqi provinces may veto the constitution, essentially giving Kurds, Sunnis, and Shiites a veto. If the permanent constitution is approved, elections for a permanent government are to occur by December 15, 2005, and it would take office by December 31,

¹ For text, see [<http://cpa-iraq.org/government/TAL.html>].

2005. If the constitution is defeated, the December 15 elections would be for a new transitional National Assembly and a new constitution draft is to be voted on by October 15, 2006.

The January 30, 2005 Election

In June 2004, the United Nations formed an 8-member central Independent Electoral Commission of Iraq (IECI), nominated by notables from around Iraq, to run the election process. CPA Orders 92, 96, and 97, issued in mid-2004, provided for voting by proportional representation (closed list). Voters chose among “political entities” (a party, a coalition of parties, or individuals). Seats in the Assembly (and the provincial assemblies) were allocated in proportion to a slate’s showing; any entity that obtained at least 1/275 of the vote (about 31,000 votes) won a seat. Under IECI rules, a female candidate occupied every third position on electoral lists in order to meet the TAL’s goal for at least 25% female membership. A total of 111 entities were on the National Assembly ballot: 9 multi-party coalitions, 75 single parties, and 27 individual persons. The 111 entities contained over 7,000 candidates. Another 9,000 candidates, also organized into party slates, competed in the provincial and Kurdish elections.

Under an Iraqi decision, Iraqis abroad were eligible to vote. The International Organization for Migration (IOM) was tapped to run the “out-of-country voting” (OCV) program. U.N. electoral advisers had opposed OCV because of the complexity of the task, as well as the expense. OCV took place in Australia, Canada, Denmark, France, Germany, Iran, Jordan, Sweden, Syria, Turkey, UAE, Britain, Netherlands, and the United States. (See [<http://www.iraqocv.org>]). About 275,000 Iraqi expatriates (including dual citizens and anyone who can demonstrate that their father was Iraqi) registered, and about 90% of them voted.

Inside Iraq, certification of voters and political entities took place November 1-December 15, 2004. Voter lists were based on ration card lists containing about 14 million names; voters needed to be at least 18 years old. Voters did not need to formally “register,” but rather to verify or correct information about them on file at 550 food ration distribution points around Iraq. In the restive areas, voters were able to vote by presenting valid identification on election day. About 5,200 polling centers were established; each center housed several polling stations. About 6,000 Iraqis staffed the branches of the IECI around Iraq, and 200,000 Iraqis staffed the polls on election day.

Election security was of major concern, but in December 2004, President Bush stated that postponement would represent victory for the insurgents and that elections should proceed as scheduled. The U.S. insistence came despite a postponement petition in November 2004 by seventeen mainly Sunni Arab parties. Prior to the election, insurgents repeatedly targeted polling stations and threatened to kill anyone who voted. To try to secure the vote, U.S. force levels in Iraq rose to 150,000 from the prior level of about 138,000. Polling centers were guarded on election day by the 130,000 members of Iraq’s security forces, with U.S. forces close by for back-up. Two days prior to election day, all vehicle traffic was banned, Iraq’s borders were closed, and polling locations were confirmed.

Because of security concerns, vote monitoring was limited to a Canada-led contingent of about 25 observers from eleven nations based in Jordan, which assessed

reports on the voting by about 50,000 Iraqi monitors. (One of the international observers was in Iraq). Another 129 foreign observers, mostly foreign diplomats, did some monitoring from Baghdad's "Green Zone."

The Iraqi government budgeted about \$250 million for the elections inside Iraq, of which \$130 million was offset by international donors, including about \$40 million from the European Union. Out of \$18.6 billion in U.S. funds for Iraq reconstruction contained in an FY2004 supplemental appropriations (P.L. 108-106), the United States provided \$40 million to improve the capacity of the IECI; \$42.5 million for elections monitoring by Iraqis; and \$40 million for political party development, through the International Republican Institute and National Democratic Institute. The OCV cost an additional \$92 million, of which \$11 million was for the U.S. component. No U.S. funds were spent for the OCV.

The Competition and Results.² The Iraqi groups that took the most active interest in the elections were those parties best positioned: Shiite Islamist parties, the Kurds, and established secular parties. The most prominent slate was the "United Iraqi Alliance" (UIA), brokered by Grand Ayatollah Ali al-Sistani and his top aides. The 228-candidate UIA slate consisted of 22 parties, but was dominated by two large Shiite Islamist parties, the Supreme Council for the Islamic Revolution in Iraq (SCIRI) and the Da'wa Party. Both, but particularly SCIRI, are politically close to Tehran. The first candidate on this slate was SCIRI leader Abd al-Aziz al-Hakim; Da'wa leader Ibrahim Jafari was number seven. There were 14 supporters of radical Shiite cleric Moqtada al-Sadr on the slate — of which eight won seats — even though Sadr himself denounced the election as a product of U.S. occupation. Pro-Sadr Shiites also competed separately on a "National Independent Elites and Cadres" list and competed in provincial elections. The two main Kurdish parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP) put aside lingering rivalries to offer a joint 165-candidate "Kurdish Alliance" list. Interim Prime Minister Iyad al-Allawi filed a six-party, 233-candidate "Iraqi List" led by his Iraqi National Accord (INA) party. The Communist Party, headed by Hamid al-Musa, filed a 257-candidate "People's Union" slate.

Sunni Arabs (20% of the overall population), perceiving electoral defeat and facing insurgent intimidation, mostly boycotted. The relatively moderate Sunni Islamist group, the Iraqi Islamic Party, filed a 275-seat slate, but it withdrew it in December 2004. The Iraqi Muslim Clerics' Association (MCA), which is said to be close to the insurgents, called for a broad Sunni boycott. An 80-candidate, mostly tribal Sunni, "Iraqis Party" slate was offered by interim President Ghazi al-Yawar. Some Sunni groups that boycotted the National Assembly contest did participate in the provincial elections.

The vote went relatively smoothly. Insurgents conducted about 300 attacks, killing about 30 Iraqis, but no polling stations were overrun, and Shiite and Kurdish voters were undeterred. Total turnout was about 58% (about 8.5 million votes). After the polls closed, President Bush said "In great numbers and under great risk...The Iraqi people, themselves, made this election a resounding success." World reaction was favorable,

² For a detailed discussion of many of these groups, see CRS Report RL31339, *Iraq: U.S. Regime Change Efforts and Post-Saddam Governance*, by Kenneth Katzman.

including from governments, such as France and Germany, that have criticized U.S. Iraq policy. Members of Congress widely praised the vote.

National Assembly results, contained in a table below, appeared to match many predictions. Sunnis won only 17 seats, leaving them under-represented relative to the population, and Kurds and Shiites over-represented. About 90 women are in the Assembly. In provincial elections, the Kurds won about 60% of the seats in Tamim (Kirkuk) province (26 out of 41 seats); Sunni Arabs hold 6 and Turkomans hold 9 seats. This has provoked an Arab and Turkmen boycott of that council.

Post-Election Government

The election results triggered factional bargaining over posts in the government and the future of Iraq; much of the negotiating centered on Kurdish demands for substantial autonomy. Because of the squabbling, a new government did not start forming until April 3. That day, Hajim al-Hassani, a Sunni from the Iraqi Islamic Party but who ran on Ghazi al-Yawar's list was named National Assembly speaker, along with two deputies: Arif Tayfour, a Kurd, and Hussein Shahrastani, an aide to Ayatollah Sistani. On April 6, PUK leader Jalal Talabani was named president, along with his two deputy presidents: SCIRI's Adel Abd al-Mahdi and Ghazi al-Yawar. They named the Da'wa Party's leader, Ibrahim al-Jafari, as Prime Minister.

On April 28, Jafari received Assembly approval for a cabinet of 32 ministers and 3 deputy prime ministers.³ Leading anti-Saddam figure Ahmad Chalabi and KDP activist Rosch Shaways were named deputy prime ministers. Five cabinet positions and a deputy prime ministership was initially filled only temporarily or left vacant, pending an agreement to appoint more Sunnis. On May 7, Jafari filled out the cabinet by appointing three Sunnis and two Shiites to ministerial posts, and the remaining deputy prime minister (Abid al-Jabburi, a Sunni). Even though these latter appointments included a Sunni, Sadoun al-Dulaymi, as Defense Minister, Sunnis complained that they hold relatively unimportant slots, such as the ministries of culture and of women's affairs.

Permanent Constitution and Referendum

The next step in the transition process was the drafting of a permanent constitution. On May 10, the National Assembly appointed 55 of its members to a drafting committee, with a SCIRI top official, Humam al-Hammoudi, as chair. Of the 55, 28 were from the UIA; 15 were from the Kurdish alliance; and 8 were from Allawi's bloc. Also appointed were one Christian, one Turkomen, and only two Sunni Arabs, prompting Sunni resentment and U.S. pressure to appoint additional Sunnis. On June 23, 2005, an agreement was finalized for 15 additional Sunnis (and one member of the small Sabian community) to become voting members of the committee, with 10 more Sunnis to serve as advisors. (One voting Sunni and one advisor were assassinated in early July 2005.)

³ The final cabinet is composed of 17 Shiite ministers, eight Kurds, six Sunnis, and one Christian (a Christian woman is Minister of Science and Technology), in addition to the three deputy prime ministers. There are six female ministers.

The drafters failed to meet the August 15 deadline for a final draft, primarily because of Sunni opposition to the Shiite and Kurdish insistence that the draft provide for regional autonomy and a weak central government. The committee had considered requesting a six-month extension (there was an August 1, 2005 deadline in the TAL to request extension), but reported U.S. pressure led the committee not to do so. Instead, the Assembly amended the TAL to allow for minor deadline extensions to allow for continued negotiations. The additional negotiations produced a draft on August 28, 2005, that the Shiites and Kurds said was final. It included some compromises but did not satisfy the Sunnis. The Kurds, in particular, achieved major gains; Article 136 sets a December 31, 2007 deadline for resettling Kurds in Kirkuk and holding a referendum on whether Kirkuk will join the Kurdish administrative region.

The role of Islam is less extensive than some had feared. The draft designates Islam “a main source” of legislation (Article 2). However, Article 2 also says no law can contradict the “established” provisions of Islam, and Article 39 implies that families would be able to choose Islamic courts from their sect to adjudicate domestic issues such as divorce and inheritance. Article 34 makes only primary education mandatory. These provisions have provoked opposition from women, who want domestic issues to come before civil courts and who fear that it will be the males of their families who determine which court to use for personal status issues and whether to educate girls beyond the primary level. On the other hand, the 25% electoral goal for women was retained (Article 48), and equal political rights for men and women is stated (Article 20). However, the draft (Article 90) says that the federal supreme court will include experts in Islamic law, as well as judges and experts in civil law.

The Sunni negotiators, including chief negotiator Saleh al-Mutlak (of the National Dialogue Council), continued to oppose the draft because of the provisions that allow two or more provinces together to form autonomous “regions” with their own regional governments. As stipulated (Article 118), each “region” would be able to organize internal security forces, which in practice could lead to the dissolution of the U.S.-trained national army and police force. Article 110 requires the central government to distribute oil and gas revenues in proportion to population from “current fields” only, implying that the regions might ultimately control revenues earned from new oil and gas discoveries. These provisions raised Sunni alarms, because their areas have virtually no current oil and gas fields and no likely new discoveries. The draft (Article 63) establishes a “Federation Council” of a size and with powers to be determined, presumably to review legislation affecting the regions. Article 132 continues the work of the High Commission for De-Ba’athification, which many Sunnis fear will be used to exclude them from government.

Negotiations between Sunni representatives and the Shiite and Kurdish drafters to modify the document continued, with U.S. mediation. On September 19, 2005, the National Assembly approved the draft, with some modifications that Sunnis wanted, which clarified government control over water rights and stated that Iraq has always been part of the Arab League. (The August 28 draft said only that the Arab peoples in Iraq were part of the Arab nation.) However, the modifications still did not satisfy the core Sunni objections. On the basis of the September 19 Assembly vote, the United Nations began printing the 5 million copies of the draft to be distributed to Iraqi households.

In contrast to the January 2005 elections, Sunnis have mostly decided to express their opposition not by boycotting but by registering in very large numbers (70%-85% in some

Sunni cities) in an effort to achieve the two-thirds negative vote in three provinces needed to defeat the constitution. Most insurgent factions have not sought to prevent this Sunni registration. Some Sunnis have demonstrated against the draft, holding pictures of deposed leader Saddam Hussein, although several press reports say that there has been little interest in the referendum throughout Iraq and that few Iraqis have received or read the text. Two of the four Sunni majority provinces (Diyala and Nineveh) have substantial populations of Shiites, Kurds, and other minorities, meaning the Sunnis might have difficulty voting it down, if that is their goal. On the other hand, the Administration deems it a positive sign that Sunnis are using the established political process, and not violence, to express opposition to the constitution.

Apparently fearing that the adoption of the constitution, as is, could cause many Sunnis to resent the constitution and back the insurgency, U.S. Ambassador to Iraq Zalmay Khalilzad continued to mediate an addendum to the September 19 draft that was printed and distributed by the United Nations. The U.S. efforts bore fruit on October 11 with an agreement between Kurdish and Shiite leaders and a leading Sunni party, the Iraqi Islamic Party, to convene a panel after the December 2005 elections to review the constitution. The panel, whose membership has not been specified, would have four months to propose amendments to the constitution, and then it would try to achieve passage of them by a 2/3 Assembly majority, and put the changes to another public referendum. The major assumption of the deal is that Sunnis, if they continue to participate in the political process, would win more seats in the Assembly to be elected on December 15 than they won in the January 30, 2005 elections, and be better positioned to propose amendments. Other changes limiting the powers of the De-Bathification commission were agreed as well. The agreement drew support from a relatively broad swath of Sunni leaders, including Adnan al-Dulaymi of the Conference of Iraqi People, although the harder line Muslim Clerics Association has not articulated a position. On the other hand, some Sunnis might question the value of voting in the October 15 referendum because the document is to be amended in 2006 and voted on again. Some Shiites and Kurds might decide not to participate if they perceive that their leaders have made compromises in the agreed constitution at the behest of U.S. pressure or to appease the Sunni community.

Table 1. National Assembly Election Results

| Slate/Party | Number of seats |
|--|------------------------|
| UIA (Shiite Islamist). About 58% of vote; Shiite turnout 75% | 140 |
| Kurdistan Alliance. About 26% of vote; Kurdish turnout 90% | 75 |
| Iraqis List (Allawi). About 14% of vote. | 40 |
| Iraqis Party (Yawar, Sunni). 1.8% of vote. Sunni turnout less than 10% | 5 |
| Iraqi Turkomen Front (Turkomen, Kirkuk-based, pro-Turkey | 3 |
| National Independent and Elites Cadre (pro-Sadr) | 3 |
| People's Union (Communist, Sunni/Shiite) | 2 |
| Kurdistan Islamic Group (Islamist Kurd) | 2 |
| Islamic Action (Shiite Islamist, Karbala) | 2 |
| National Democratic Alliance (secular) | 1 |
| Rafidain National List (Assyrian Christian) | 1 |
| Liberation and Reconciliation Gathering (secular) | 1 |